



# Memorandum

**TO:** THE HONORABLE MAYOR  
AND CITY COUNCIL

**FROM:** Richard Doyle  
City Attorney

**SUBJECT:** An Urgency Ordinance Amending  
Ordinance No. 28517 to Delay the  
Effective Date from May 7, 2009  
Until the Proposed Amendments to  
Title 20 are Adopted and Take  
Effect

**DATE:** April 30, 2009

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## **RECOMMENDATION**

It is recommended that the City Council adopt the proposed urgency ordinance amending Ordinance No. 28517 to delay the effective date from May 7, 2009 until the proposed amendments to Title 20 are adopted and take effect.

## **OUTCOME**

The proposed urgency ordinance will ensure the effective implementation of the terms and conditions of the litigation settlement agreement approved by the City Council on March 24, 2009 by ensuring that the amendments to Title 16 in Ordinance No. 28517 and the related proposed amendments to Title 20 take effect at the same time. This action is necessary to avoid confusion about the effectiveness of the laws regulating Cardrooms in San Jose in the event that one of the parties to the litigation settlement agreement exercises their right to withdraw from the settlement agreement. Ensuring the effectiveness of Title 16 at all times is necessary to the immediate preservation of the public peace, health and safety.

## **BACKGROUND**

On March 24, 2009 the City Council authorized the City Attorney to execute the litigation settlement agreements with Sutter's Place, Inc., dba Bay 101 and Garden city, Inc. At the same time the City Council approved for publication the amendments to Title 16 that had been negotiated during the settlement talks between the City and the Cardrooms. These amendments to Title 16 are contained in Ordinance No. 28517. Ordinance No. 28517 takes effect on May 7, 2009. As part of the settlement the Council adopted Resolution No. 74838 initiating proceedings for consideration of related amendments to Title 20 concerning the land use regulations in the Zoning Code on the relocation of cardrooms. On April 22, 2009, the Planning Commission reviewed and approved the proposed amendments to Title 20. The City Council will not consider the proposed

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amendments until May 19, 2009, 12 days after the amendments to Title 16 take effect, but within the time in which the parties may withdraw from the settlement agreement.

### **ANALYSIS**

The litigation settlement agreement with the Cardrooms contemplated that the proposed amendments to Title 16 contained in Ordinance No. 28517 and the proposed amendments to Title 20 allowing for relocation of cardrooms would take effect at the same time in order to effectuate the terms and conditions of litigation settlement agreement regarding the dismissal of the Cardrooms' actions against the City, the mutual releases of the parties to the litigation. It is clear at the present time that that the proposed amendments to Title 20 allowing for the relocation of cardrooms will not be considered for first reading by the City Council until May 19, 2009 while Ordinance No. 28517 will take effect on May 7, 2009 unless its effective date is delayed by adoption of this urgency ordinance. If the proposed amendments to Title 20 are not approved as proposed, then the Cardrooms and the City have the ability to withdraw from the settlement agreement. Adoption of the urgency ordinance will avoid having the amendments to Title 16 go into effect at a time when the Cardrooms could withdraw from the settlement agreement thereby avoiding confusion about the effectiveness of the City's laws regulating cardrooms that would ensue. Given the importance of the effectiveness of the laws governing cardrooms to the City it is imperative that Title 16 be clearly enforceable at all times. Avoiding confusion about the effectiveness of the City's laws regulating cardrooms is therefore necessary to the immediate preservation of the public peace, health and safety.

### **PUBLIC OUTREACH/INTEREST**

This memorandum and the proposed ordinance is posted on the City's website for the May 5, 2009 Council Agenda.

### **COORDINATION**

Not applicable.

### **CEQA**

Not a project.



RICHARD DOYLE, City Attorney

cc: Debra Figone

For questions, please contact RICHARD DOYLE, City Attorney at (408) 535-1900.